(1)

Supreme Court, U.S.

01-31 JUN 15 2001

OFFICE OF THE CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

DIANE L. HOLBROOK,

Petitioner,

v.

NATIONWIDE MUTUAL INSURANCE COMPANY,
A FOREIGN CORPORATION,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

DIANE L. HOLBROOK
P.O. Box 1512
Hobe Sound, Florida
33475-1512
(561) 545-9793
Petitioner Pro Se.

Washington, D.C. • THIEL PRESS • (202) 328-3288

78 pp

QUESTIONS PRESENTED FOR REVIEW

1. Are clerical mistakes in judgments, orders or other part of the record, and errors therein arising from oversight or omission when not corrected by the court at any time of its own initiative or on the motion of any party and after such notice, a violation of Rule 60(a) and Rule 55(a) and due process of law as guaranteed to petitioner under the equal protection clause and the due process clause of the fourteenth amendment to the United States Constitution?

2. Did the lower court err when its panel of three judges began their opinions in a time frame from February 3, 1999, mistakenly bypassing, by relying on clerical mistake on record, Petitioner's Court of Appeals time frame of August 28, 1998 through January 19, 1999?

LIST OF PARTIES

The caption of the case includes the names of all parties.*

*Hon. Judge Edward B. Davis has reportedly retired from the bench. Hon. Judge K. Michael Moore is the newly assigned Judge.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner petitions herein for certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit, and/or to remand the case to request clerical mistakes be corrected in that lower court and then for review in light of the allegations contained herein.

OPINIONS BELOW

The opinion of the court of appeals was not published.

JURISDICTION

The court of appeals denied Petitioner's petition for rehearing and rehearing en banc on January 31, 2001 (App. 8a). Judgment of the court of appeals was entered on March 21, 2001 (App. 10a). The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

Section 1 of the Fourteenth Amendment to the United States Constitution provides, in relevant part:

"No state . . . shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

This case was transferred to the United States District Court, Southern District of Florida, for jurisdictional reasons. (See R2 Doc 38).

On August 28, 1998, Petitioner (Plaintiff below) filed the Civil Cover Sheet transferring the case, an Original Complaint, and other documents. Plaintiff mailed the Summon(s) to be accepted or served to the Registered Agent with copies of papers, originally with court had two sets on file.

Plaintiff did all rules requirements except the Plaintiff's Summon(s) was not validated by the Clerk of the Court and (App. 45a) was returned to Plaintiff on November 25, 1998 with (App. 47a, 48a) a letter of what is required for Service Of Process to be accepted and served.

Please note that (App. 47a, 48a) the Original Complaint DOI-SOP NO.: 98-29181. The (App. 52a-54a) Amended Complaint being a combined serve with Original Complaint DOI-SOP NO.: 98-31152 on December 21, 1998 as per instructions from Pam Pitts. Amended Complaint was written and filed to reflect the address change done on November 23, 1998 and to match the Summon(s) required by the Clerk of the Court in Miami in order to be sealed and signed by the Clerk of the Court in Miami.

On December 16, 1998, the Amended Complaint was properly filed, with two sets, and additional copies made plus the case number, seal, and signature of the Clerk of the Court in Miami appears on the Summon(s) ready to be mailed by doing all requirements of making certain that both the Original Complaint, Civil Cover Sheet transferring the case, multiple documental Exhibits, Amended Complaint, and other papers, along with the Summon(s) were all to be received and had arrived before the 120th day deadline.

Defendant was officially served on the 115th day, which was December 21, 1998. Therefore, an answer was due in 20 days – which would be January 10, 1999. No

answer was filed. So, Plaintiff hand delivered (App. 51a-54a) for default judgment as noted on proceedings record list. This is when the Clerk of the Court should have signed the "Request To Clerk To Enter Default" form provided and Rule 55(a) as well as Rule 55(b)(1) would end this case in full favor for the Plaintiff.

The record (App. 40a, 51a), shows that default judgment entry date done on January 22, 1999. Petitioner hereby freshly alleges that she never received it, and speculates that it might have been lost in the mail. Petitioner also suggests herein that the form may have been not signed by the Clerk of the Court and mailed to all parties (App. 51a).

The court stamped by District Court on January 29, 1999 entry is the identical Notice of Service Process as the January 19, 1999 entry also court stamped by the District Court (App. 55a-57a). SEE DOI-SOP NO.: 98-31152 on both being identical numbers. January 29, 1999 filing had already been previously filed on January 19, 1999.

REASONS FOR GRANTING THE WRIT

The decisive legal rulings described below conflict with the clear principles this Court has established on equal protection challenges. Specifically, the Eleventh Circuit and the District Court failed to properly look into the Clerical mistakes brought to their attentions and apply Rule 60(a), utilized by this Court in equal protection challenges, and it failed to properly consider elements of intentional and purposeful discrimination in Petitioner's "as applied" equal protection challenge.

ARGUMENT

I.

CLERICAL MISTAKES IN JUDGMENTS, ORDERS OR OTHER PARTS OF THE RECORD AND ERRORS THEREIN ARISING FROM OVERSIGHT OR OMISSION WHEN NOT CORRECTED BY THE COURT AT ANY TIME OF ITS OWN INITIATIVE OR ON THE MOTION OF ANY PARTY AND AFTER SUCH NOTICE ARE A VIOLATION OF RULE 60(a) AND RULE 55(a) AND DUE PROCESS OF LAW AS GUARANTEED TO PETITIONER UNDER THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

The Eleventh Circuit incorrectly applied an Order starting the history of this case on February 3, 1999 and did not mention important dates from the beginning and what had transpired resulting in default against the Defendant and closing the case in full favor for the Plaintiff before February 2, 1999 even came around. A series of bureaucratic Clerical mistakes from the very beginning, within the time frame of August 28, 1998 before February 2, 1999 even came around, has always characterized Petitioner's arguments. Addressing Clerical mistakes under Rule 60(a) resulting signature from these courts under Rule 55(a) under due process of law as guaranteed to Plaintiff, now petitioner, under the equal protection clause and the due process clause of the Fourteenth Amendment to the United States Constitution.

II.

THE LOWER COURT ERRED WHEN THE PANEL STARTED THEIR OPINIONS FROM FEBRUARY 3, 1999 AND DID NOT RELATE TO PETITIONER'S COURT OF APPEALS TIME FRAME OF AUGUST 28, 1998 THROUGH JANUARY 19, 1999, WHEREAS REHEARING EN BANC CLARIFIED MISCOMMUNICATIONS AND ISOLATED MORE PRECISELY THE ALLEGED CLERICAL ERRORS.

The Court of Appeals' panel's opinion contains a material factual mistake about what Petitioner's Brief primarily involved starting from the beginning and ending before the panel started in referring to February 2, 1999 on. The panel's opinion shows miscommunication. As such, Diane L. Holbrook respectfully requests this Court to grant her Petition for Writ of Certiorari, and to consider all of the evidence with respect to the Clerical mistakes presented. Also, Diane L. Holbrook respectfully requests this Court to consider elements of intentional and purposeful discrimination consistent with equal protection challenge.

CHRONOLOGY OF EVENTS

The background facts are straightforward. Plaintiff filed a Pro Se complaint transferring this case, multiple documental Exhibits, and other documents, to the United States District Court for the Southern District of Florida because of Diversity of Citizenship under 28 U.S.C.S. §1332. This was done on August 28, 1998.

Plaintiff filed Notice pertaining to Registered Agent's address to match Summon(s) for service on November 23, 1998 to Miller, Miller, Kearney & Geschickter, LLP, Department of Insurance Service of Process, and originally with court had two sets on file. District Court required Complaint to reflect address of Registered Agent

resulting into an Amended Complaint, then would seal and sign Summon(s) afterwards. Remainder is explained in the Statement of the Case, herein.

Carlos Juenke, to the best of Petitioner's recollection, was the original Clerk of Court in Miami handling this case. Juenke left the government and went into private work. Also see "Motion by Diane L. Holbrook to Correct the record and reinstate appeal process to new clerk; Clarence Maddox (App. 34a-41a). No response has been sent for (App. 37a), Rule 60(a) followed by signing Rule 55(a).

The (App. 39a) on the Defendant's address and local Registered Agent does not match the Amended Complaint to match the summons already filled out based on the information on the Corporate Inquiry Menu (App. 49a-50a). Notice Clerical mistake number 1.

The (App. 41a) on record does not describe the circumstances correctly because it does not match the information provided (App. 55a-57a). Notice Clerical mistake number 2.

The (App. 40a) shows answer due date December 26, 1998 for Defendant and this was not so because Service Of Process was completed on the 21st day of December, 1998. Law allows Defendant twenty days to answer and this is only five days from date of service. Notice Clerical mistake number 3.

The (App. 40a-41a) on record referring to (App. 52a, 53a-54a), describes correctly and matches information provided. Law allows Defendant twenty days to answer from December 21, 1998 with answer due on January 10, 1999 before times expires.

Resigtered Agent – Agent's acts bind insurer. The acts and declarations of the agent of an insurance com-

pany, within the scope of his actual (apparent) authority are binding on the insurance company.

The (App. 40a) on record referring to (App. 51a) describes default judgment against Defendant by Diane L. Holbrook on January 19, 1999. Record shows that default judgment entry date done on January 22, 1999. Petitioner never received it, and speculates that it might have been lost in the mail. Petitioner further postures that the form might not have been signed by the clerk of the court and mailed to all parties (App. 51a).

Notice the double entry (App. 52a-54a, 55a-57a) being identical same document contents recorded on (App. 40a-41a) with different serving registered agent dates. First date of December 21, 1998 correctly entered. Second date, of identical same document contents, of January 12, 1999 error entered. Notice Clerical mistake number 4.

CONCLUSION

Based on the foregoing, Petitioner respectfully requests that this Court grant her Petition for Writ of Certiorari, and/or to remand the case to request clerical mistakes be corrected and decide this case in full favor of the Petitioner (Plaintiff below) resulting in a vacating of all previous Orders entered in District Court as Orders resulting from a chain reaction occurrence from a case already won by Default against Defendant.

Respectfully submitted,

DIANE L. HOLBROOK
P.O. Box 1512
Hobe Sound, Florida
33475-1512
(561) 545-9793
Petitioner Pro Se.

APPENDIX A

[DO NOT PUBLISH]

[Filed JAN 19 2001]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 00-10141
Non-Argument Calendar

D.C. Docket No. 98-14246-CV-EBD

DIANE L. HOLBROOK,

Plaintiff-Appellant,

versus

NATIONWIDE MUTUAL INSURANCE COMPANY,
A Foreign Corporation C/O Robert CiWetzel, Esq.
Registered Agent, 800 Graves Mill Road,
P.O. Box 10669, Lynchburg, Virginia,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida

(January 19, 2001)

Before BIRCH, DUBINA and MARCUS, Circuit Judges.

PER CURIAM:

Diane L. Holbrook appeals the district court's order granting the defendant's motion for final judgment in her *pro se* diversity action, 28 U.S.C. §1332. On appeal, Holbrook argues that the district court erred by granting final judgment in favor of Nationwide Mutual Insurance Company ("Nationwide") because Nationwide defaulted by failing to file its motion to dismiss in a timely manner. In addition, she contends that the district court judge abused his discretion by declining to recuse himself in light of the fact that Nationwide's attorney was the judge's law clerk twelve years earlier. Holbrook argues that judicial bias motivated the court to deem Nationwide's motion to dismiss to be timely filed, to deny Holbrook's motions for extensions to file her second amended complaint, and not to respond to other motions made by Holbrook.

We review the district court's findings of fact regarding an order of final judgment for clear error and its conclusions of law *de novo*. *See Stamm v. Paul*, 121 F.3d 635, 638 (11th Cir. 1997). In addition, we review the district court judge's decision not to recuse himself for abuse of discretion. *See Bivens Gardens Office Bldg., Inc. v. Barnett Banks of Fla., Inc.*, 140 F.3d 898, 905 (11th Cir. 1998).

Upon careful review of the record and the parties' briefs, we find no reversible error and affirm.

The background facts are straightforward. Holbrook filed a *pro se* complaint against Nationwide, alleging breach of contract, intentional infliction of emotional distress, and fraudulent misrepresentation based on Nationwide's denial of benefits to her under a homeowner's insurance policy. Holbrook later filed an amended complaint addressing the same claims. On February 3,

1999, the district court granted Nationwide's motion for an extension until March 4, 1999, to respond to the amended complaint. Holbrook nevertheless moved for a default judgment on February 8, 1999, alleging that Nationwide had failed to answer her amended complaint in a timely manner. The district court denied this motion.

On March 4, 1999, Nationwide moved to dismiss Holbrook's amended complaint, to strike portions of the amended complaint and its attachments, and alternatively, moved for an order directing Holbrook to file a more definite statement. Holbrook filed another motion for default, again contending that Nationwide failed to timely answer her amended complaint. The district court denied Holbrook's motion because the record showed that Nationwide filed its motion to dismiss on March 4, 1999, the extended deadline.

Holbrook then moved the district court judge, Chief United States District Judge Edward B. Davis, to recuse himself because Nationwide's attorney, Raoul G. Cantero, had served as Judge Davis's law clerk in 1986 - 1987. Holbrook contended that the district court's denial of her motion for default stemmed from judicial bias in favor of Nationwide. Holbrook also argued that Nationwide's motion to dismiss could not have been filed on March 4, 1999, as the district court found, because she did not see Nationwide's motion in the court file when she visited the records room on March 5, 1999. Absent bias, Holbrook contended, the district court would have concluded that Nationwide's motion was filed after the March 4th deadline. The district court denied Holbrook's request for recusal and found Nationwide's motion to have been filed on March 4, 1999. In its order, the district court explained that, according to the normal intake procedures of the court, a hard copy of

the motion may not have been physically present in the case file by March 5, 1999.

Holbrook then filed a notice of vacation, informing the district court that she would "be out-of-state from May 10, 1999, through June 18, 1999," and that she had been summoned for jury duty on June 21, 1999. The district court dismissed Holbrook's amended complaint because there were insufficient facts to conclude that diversity jurisdiction existed between Holbrook and Nationwide, but the court permitted Holbrook to file a second amended complaint within 30 days, or by May 26, 1999. All pretrial matters were then referred to a magistrate judge.

Holbrook subsequently filed two identical motions for extensions until August 5, 1999, offering the same reasons she listed in her notice of vacation. The magistrate judge denied one of these motions on the grounds that Holbrook had failed to show good cause for an extension; the district court subsequently denied the other motion as moot. Holbrook then appealed the district court's denial of her motion for default, which this Court dismissed as frivolous.

On August 27, 1999, Nationwide filed a motion for final judgment after Holbrook failed to file her second amended complaint. In September, Holbrook filed another motion for an extension of time, which was denied because she failed to show cause. The magistrate judge then recommended that, due to Holbrook's failure to file a second amended complaint, final judgment should be granted in Nationwide's favor. After reviewing all of the objections to the magistrate judge's report and recommendation, the district court granted Nationwide's motion for final judgment.

We conclude that final judgment properly was granted in favor of Nationwide because Holbrook failed to file a second amended complaint as the district court directed. A district court may, upon dismissing a complaint, provide a plaintiff a stated period of time within which to submit an amended complaint. *See Schuurman v. Motor Vessel "Betty K V"*, 798 F.2d 442, 445 (11th Cir. 1986). Failure to amend the complaint within the allotted time or failure to seek leave from the court to file after the time period has expired may result in the dismissal order becoming a final judgment. *See id.* Because Holbrook's amended complaint was dismissed and she failed to file a second amended complaint within the extended time period established by the district court, the district court did not err in granting final judgment in favor of Nationwide. In addition, Holbrook, in her September 1999 motion for an extension, failed to show cause for granting such an extension. The district court did not err in denying the motion. As for Holbrook's contention that Nationwide did not file its motion to dismiss in a timely manner, the record plainly shows that the motion was date-stamped by the district court on March 4, 1999.

We further conclude that the district court judge did not abuse his discretion by declining to recuse himself. Holbrook did not offer proof of any actual bias and failed to show that the district court judge's impartiality reasonably could be questioned by his having employed Nationwide's attorney as a judicial clerk some twelve years earlier. A judge should not recuse himself in response to unsupported or highly tenuous speculation. *See United States v. Greenough*, 782 F.2d 1556, 1558 (11th Cir. 1986).

Because the district court did not err in granting Nationwide final judgment, and because the district court judge did not abuse his discretion in declining to recuse himself from Holbrook's case, we affirm.

AFFIRMED.

APPENDIX B

Diane L. Holbrook
P.O. Box 1512
Hobe Sound, FL 33475-1512

March 21, 2001

Re: 00-10141-CC Diane L. Holbrook v. Nationwide Mutual Ins. Co.

DC DKT No.: 98-14246 CV-EBD

CC: Diane L. Holbrrok
CC: Raoul G. Cantero III
CC: Eric Nissim Assouline
CC: Administrative File

[Filed MAR 21 2001]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 00-10141-CC

DIANE L. HOLBROOK,

Plaintiff-Appellant,

versus

NATIONWIDE MUTUAL INSURANCE COMPANY, a Foreign Corporation C/O Robert CiWetzel, Esq. Registered Agent, 800 Graves Mill Road, P.O. Box 10669, Lynchburg, Virginia,

Defendant-Appellee.

On Appeal from the United States District Court
for the Southern District of Florida

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

(Opinion _____, 11th Cir., 19 __, ___ F.2d ___).

Before: BIRCH, DUBINA and MARCUS, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/ Stanley Marcus
UNITED STATES CIRCUIT JUDGE

UNITED STATES COURT OF APPEALS
Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

Thomas K. Kahn
Clerk

In Replying Give
Number Of Case
And Names of Parties

March 21, 2001

MEMORANDUM TO COUNSEL OR PARTIES

RE: 00-10141-CC Diane L. Holbrook v.
Nationwide Mutual Ins. Co.
DC DKT NO.: 98-14246 CV-EBD

The enclosed order has been entered on petition(s) for rehearing.

See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate.

Sincerely,

THOMAS K. KAHN, Clerk

Reply To: Jenifer Alexander/dc/ (404) 335-6172

Encl.

APPENDIX C

Diane L. Holbrook
P.O. Box 1512
Hobe Sound FL 33475-1512

April 09. 2001

RE: 00-10141-CC Diane L. Holbrook v. Nationwide Mutual Ins. Co.

DC DKT NO.: 98-14246 CV-EBD

TO: Clarence Maddox
CC: Diane L. Holbrook
CC: Raoul G. Cantero III
CC: Eric Nissim Assouline
CC: Hon. Frank J. Lynch Jr.
CC: Administrative File

UNITED STATES COURT OF APPEALS
Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

Thomas K. Kahn
Clerk

In Replying Give Number
Of Case And Names of Parties

April 09, 2001

Clarence Maddox
Clerk, U.S. District Court
301 N. Miami Avenue
Miami, FL 33128

RE: 00-10141-CC

Diane L. Holbrook v.
Nationwide Mutual Ins. Co.

DC DKT NO.: 98-14246 CV-EBD

The enclosed certified copy of the judgment and a copy of this court's opinion are hereby issued as the mandate of this court.

The motion for stay of mandate has been denied. The enclosed certified copy of the judgment and a copy of this court's opinion are hereby issued as the mandate of this court.

Also enclosed are the following:

Original record on appeal or review, consisting of: two volumes.

Please acknowledge receipt on the enclosed copy of this letter.

A copy of this letter and the judgment form, *but not a copy of the court's opinion or Rule 36-1 decision,* is also

being mailed to counsel and pro se parties. A copy of the court's opinion or Rule 36-1 decision was previously mailed to counsel and pro se parties on the date it was issued.

Sincerely,

THOMAS K. KAHN, Clerk

Reply To: Lisa Streeter (404) 335-6134

Encl.

[Filed APR 09 2001]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 00-10141-CC

DIANE L. HOLBROOK,

Plaintiff-Appellant,

versus

NATIONWIDE MUTUAL INSURANCE COMPANY, a Foreign Corporation C/O Robert CiWetzel, Esq., Registered Agent, 800 Graves Mill Road, P.O. Box 10669, Lynchburg, Virginia,

Defendant-Appellee.

On Appeal from the United States District Court
for the Southern District of Florida

ORDER:

(X) The motion of Appellant, Holbrook, for (X) stay ( ) recall and stay of the issuance of the mandate pending petition for writ of certiorari is DENIED.

( ) The motion of Appellant, Holbrook, for (X) stay ( ) recall and stay of the issuance of the mandate pending petition for writ of certiorari is GRANTED to and including _____ , the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within the period above mentioned there shall be filed with the Clerk of this Court the certificate of the Clerk of the Sup-

reme Court that the certiorari petition has been filed. The Clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon expiration of the stay granted herein, unless the above mentioned certificate shall be filed with the Clerk of this Court within that time.

( ) The motion of Appellant, Holbrook, for a further stay of the issuance of the mandate is GRANTED to and including _____ , under the same conditions as set forth in the preceding paragraph.

( ) *IT IS ORDERED* that the motion of Appellant, Holbrook, for a further stay of the issuance of the mandate is DENIED.

/s/ Stanley Marcus
UNITED STATES CIRCUIT JUDGE

[Filed Jan 19 2001]

UNITED STATES COURT OF APPEALS
For the Eleventh Circuit

No. 00-10141

District Court Docket No.
98-14246-CV-EBD

DIANE L. HOLBROOK,

Plaintiff-Appellant,

versus

NATIONWIDE MUTUAL INSURANCE COMPANY,
a Foreign Corporation C/O Robert CiWetzel, Esq.
Registered Agent, 800 Graves Mill Road, P.O. Box
10669, Lynchburg, Virginia,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida

JUDGMENT

It is hereby ordered, adjudged, and decreed that the attached opinion, included herein by reference, is entered as the judgment of this Court.

Entered: January 19, 2001
For the Court: Thomas K. Kahn, Clerk
By: McCombs, Elaine

[ISSUED AS MANDATE
APR 09 2001
U.S. Court of Appeals
Atlanta, Ga.]

YOU COULD HAVE RECEIVED THIS NOTICE YESTERDAY BY FAX!

Just complete and return the request form below and you will receive notice of orders and judgments within hours of their entry. It's FREE and it's FAST!

Note: If you are no longer an attorney on this case, please disregard this notice.

[UPN BAR CODE]

Diane L. Holbrook
PO Box 1512
Hobe Sound, FL 33475

- - - - -

2:98-cv-14246 #57
12 page(s).
05/07/2001

- - - - -

AUTHORIZATION FOR E-NOTICING

I hereby authorize the Clerk of Court for the Southern District of Florida to transmit notification of judgments, orders, and hearings by facsimile in any case in which this capability exists and I appear as attorney of record. I understand this electronic transmission will be in lieu of notice by mail. The following telephone number is designated for facsimile transmission:

Fax Phone#_____ Firm Name _____

Phone # _____ Attorney Name _____
Florida Bar # _____ Street Address _____
Signature _____ City, State, Zip _____
List of My Active Case #'s _____

_____

FAX this completed form to the Clerk's Office at (305) 523-5209. For information please call our E-NOTICING help line at (305) 523-5212.

NOTICE: Only certain Judges are E-NOTICING, so you must continue to provide envelopes for cases before non-participating Judges. Call the help line above for the list of participating judges.

NOTICE: Be sure to promptly notify the Clerk of Court in writing of any changes to your name, address, firm or fax number. A notification should be sent for each of your active cases.

Control #: CV-fax_hp-23555

APPENDIX D

[Filed May 2, 2001]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 98-14246-CIV-MOORE

DIANE L. HOLBROOK,

Plaintiff,

v.

NATIONWIDE MUTUAL INSURANCE COMPANY,
a Foreign Corporation C/O Robert CiWetzel, Esq.,
Registered Agent,

Defendants.

CLERK'S ORDER OF JUDICIAL OFFICER REASSIGNMENT OF A CLOSED CASE

Document(s) have been submitted to this Court which pertain to a case in which the assigned judge is no longer with this Court; all parties to this action are noticed as follows:

1. That pursuant to the Local Rules of this Court, providing for the random and equal allotment of cases, the above-styled case is hereby reassigned to the calendar of K. Michael Moore, United States District Judge for all further proceedings, and

2. That all papers hereafter filed shall bear the assigned case number followed by the surname of the assigned Judicial Officer as follows:

thereby indicating the Judge to whom all future documents should be routed or otherwise brought for attention, in accordance with *S.D.Fla. L.R.* 5.1.A.2.

DONE at the Federal Courthouse Square, Miami, Florida, this 2nd day of May, 2001.

CLARENCE MADDOX,
Court Administrator Clerk of Court

By: /s/ Yvonne Cedeno
Deputy Clerk

[Filed May 2, 2001]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Diane L. Holbrook
P O Box 1512
Hobe Sound, Florida
33475-1512
Phone: 1(561) 545-9793

April 17, 2001

Attn: Clarence Maddox
Court Administrator/Clerk of Court
Clerk, United States District Court
Federal Courthouse Square
301 North Miami Avenue
Miami, Florida 33128-7788

RE: DC Docket No.: 98-14246-CV-EBD

RE: APPEAL CASE NO.: 00-10141-CC

RE: FRAP 41. Mandate: Contents; Issuance and Effective Date;
Stay (d) (1) and (d) (2) (A), (B), and (D).

RE: Filing of a petition for a writ of certiorari in the Supreme Court of the United States due in June 18, 2001. Appealing to higher court from Court Of Appeals Decisions!

DIANE L. HOLBROOK, Plaintiff v. Nationwide Mutual Insurance Company, a Foreign Corporation, Defendant

Dear Clarence Maddox:

There is a clerical mistake on record arising from oversight. Please refer to the following six documents containing pages of each documents as follow:

1. Letter certified mailed to Clarence Maddox dated May 24, 2000 as being received. (11 pages attached).
2. January 19, 2001 ORDER from Court of Appeals with background facts starting at February 3, 1999 instead of the beginning starting at August 28, 1998 (of what my initial Brief is about). (6 pages attached).
3. January 31, 2001 PETITION FOR REHEARING AND FOR REHEARING EN BANC to Court Of Appeals. (27 pages attached).
4. March 21, 2001 ORDER from Court Of Appeals denied Rehearing and Rehearing En Banc. (3 pages attached).
5. March 27, 2001 MOTION TO STAY OR RECALL OF MANDATE to Court of Appeals. (4 pages attached).
6. April 9, 2001 ORDER from Court Of Appeals denied Stay. (plaintiff's motion was for recall and stay) Court of Appeals clerk says that since Stay is denied and therefore recall is not considered) beyond my understanding pertaining to reading FRAP 41?? (4 pages attached).

The clerical mistake on record needs to be corrected pursuant to Rule 60(a) and requesting to clerk to enter default after correction has been made upon record pursuant to Rule 55(a) to be entered in default of naturalization because the motion for extension by Defendant was not prior to expiration of time per Law and was done

after default judgment made by Diane L. Holbrook, Plaintiff.

Respectfully and Sincerely Submitted,

/s/ Diane L. Holbrook
Diane L. Holbrook - Plaintiff - Pro Se
Diane L. Holbrook
P O Box 1512
Hobe Sound, Florida 33475-1512
Telephone: 1(561) 545-9793

Diane L. Holbrook
P.O. Box 1512
Hobe Sound FL 33475-1512

April 09. 2001

RE: 00-10141-CC Diane L. Holbrook v. Nationwide Mutual Ins. Co.

DC DKT NO.: 98-14246 CV-EBD

TO: Clarence Maddox
CC: Diane L. Holbrook
CC: Raoul G. Cantero III
CC: Eric Nissim Assouline
CC: Hon. Frank J. Lynch Jr.
CC: Administrative File

UNITED STATES COURT OF APPEALS
Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

Thomas K. Kahn
Clerk

In Replying Give Number
Of Case And Names of Parties

April 09, 2001

Clarence Maddox
Clerk, U.S. District Court
301 N. Miami Avenue
Miami, FL 33128

RE: 00-10141-CC

Diane L. Holbrook v.
Nationwide Mutual Ins. Co.

DC DKT NO.: 98-14246 CV-EBD

The enclosed certified copy of the judgment and a copy of this court's opinion are hereby issued as the mandate of this court.

The motion for stay of mandate has been denied. The enclosed certified copy of the judgment and a copy of this court's opinion are hereby issued as the mandate of this court.

Also enclosed are the following:

Original record on appeal or review, consisting of: two volumes.

Please acknowledge receipt on the enclosed copy of this letter.

A copy of this letter and the judgment form, *but not a copy of the court's opinion or Rule 36-1 decision,* is also

being mailed to counsel and pro se parties. A copy of the court's opinion or Rule 36-1 decision was previously mailed to counsel and pro se parties on the date it was issued.

Sincerely,

THOMAS K. KAHN, Clerk

Reply To: Lisa Streeter (404) 335-6134

Encl.

[Filed APR 09 2001]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 00-10141-CC

DIANE L. HOLBROOK,

Plaintiff-Appellant,

versus

NATIONWIDE MUTUAL INSURANCE COMPANY, a Foreign Corporation C/O Robert CiWetzel, Esq., Registered Agent, 800 Graves Mill Road, P.O. Box 10669, Lynchburg, Virginia,

Defendant-Appellee.

On Appeal from the United States District Court
for the Southern District of Florida

ORDER:

(X) The motion of Appellant, Holbrook, for (X) stay ( ) recall and stay of the issuance of the mandate pending petition for writ of certiorari is DENIED.

( ) The motion of Appellant, Holbrook, for (X) stay ( ) recall and stay of the issuance of the mandate pending petition for writ of certiorari is GRANTED to and including _____ , the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within the period above mentioned there shall be filed with the Clerk of this Court the certificate of the Clerk of the Sup-

reme Court that the certiorari petition has been filed. The Clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon expiration of the stay granted herein, unless the above mentioned certificate shall be filed with the Clerk of this Court within that time.

( ) The motion of Appellant, Holbrook, for a further stay of the issuance of the mandate is GRANTED to and including _____ , under the same conditions as set forth in the preceding paragraph.

( ) *IT IS ORDERED* that the motion of Appellant, Holbrook, for a further stay of the issuance of the mandate is DENIED.

/s/ Stanley Marcus
UNITED STATES CIRCUIT JUDGE

[Filed Jan 19 2001]

UNITED STATES COURT OF APPEALS
For the Eleventh Circuit

No. 00-10141

District Court Docket No.
98-14246-CV-EBD

DIANE L. HOLBROOK,

Plaintiff-Appellant,

versus

NATIONWIDE MUTUAL INSURANCE COMPANY,
a Foreign Corporation C/O Robert CiWetzel, Esq.
Registered Agent, 800 Graves Mill Road, P.O. Box
10669, Lynchburg, Virginia,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida

JUDGMENT

It is hereby ordered, adjudged, and decreed that the attached opinion, included herein by reference, is entered as the judgment of this Court.

Entered: January 19, 2001
For the Court: Thomas K. Kahn, Clerk
By: McCombs, Elaine

[ISSUED AS MANDATE
APR 09 2001
U.S. Court of Appeals
Atlanta, Ga.]

[Filed May 2 2001]

[Received by Clarence Maddox,
Clerk. U.S. Dist Ct. S.D. of Fla.,
May 24 2000]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Diane L. Holbrook
P O Box 1512
Hobe Sound, Florida
33475-1512
Phone: (561) 545-9793

May 23, 2000

Attn: Clarence Maddox
Court Administrator/Clerk of Court
Clerk, United States District Court
Federal Courthouse Square
301 North Miami Avenue
Miami, Florida 33128-7788

RE: DC DKT NO.: 98-14246-CV-EBD

RE: APPEAL CASE NO.: 00-10141-CC (To Reinstate)

RE: APPEAL CASE NO.: 99-10415-JJ (Interlocutory Appeal)

Diane L. Holbrook, Plaintiff v. Nationwide Mutual Insurance Company, a Foreign Corporation, Defendant

Dear Clarence Maddox;

There is a clerical mistake on record arising from oversight. See 1/29/99 #8 and also see 1/19/99 #5 and 1/19/99 #6. Pursuant to Rule 60(a) attached with Request To Clerk To Enter Default after correction has been made upon record. Please also notice that on August 27, 1999, the Defendant, Nationwide Mutual Insurance Company, a Foreign Corporation in Paragraph 1. only, clearly agrees with Plaintiff, Diane L. Holbrook that they were served on December 21, 1998 and not on January 12, 1999 as the record indicates. With both sides in agreement in writing and also signed by the Defendant themself and states in Procedural History by Defendant with all attachments to this letter showing who the Registered Agent for Nationwide Mutual Insurance Company, a Foreign Corporatin is as being the Insurance Commissioner himself. I am asking for the mistake to be corrected by the court pursuant to Rule 60(a) and also to Rule 55(a) to be entered in default of naturalization because the motion to extend time was presented to the court after time expired and after default judgment by Diane L. Holbrook, Plaintiff. This and for the foregoing reasons the Plaintiff, Diane L. Holbrook, prays that this Court will correct and issue thru naturalization by laws provided within to allow the Plaintiff to Reinstate in the Appeal process with corrected records to reverse and receive the entitled to Default Judgment against the Defendant.

Respectfully submitted,

/s/ Diane L. Holbrook
Diane L. Holbrook - Plaintiff
Diane L. Holbrook
P.O. Box 1512

Hobe Sound, Florida 33475-1512
(561)545-9793

cc: Eric N. Assouline Esq./Raoul G. Cantero, III Esq./
Adorno & Zeder, P.A. Natalie J. Carlos, Esq.

[Received by Clarence Maddox,
Clerk. U.S. Dist. Ct. S.D. of Fla.
May 24 2000]

CASE NO.98-14246-CIV-DAVIS

REQUEST TO CLERK TO ENTER DEFAULT

To: Clerk

Defendant Nationwide Mutual Insurance Company, a Foreign Corporation, having failed to answer within twenty (20) days from the date of service of the "Amended Complaint" supersedes the "Original Complaint" resulting in manner in which Defendant is in default of naturalization, you are requested to enter his/her default pursuant to Rule 60(a) of the Federal Rules of Civil Procedure, and to Rule 55(a) of Federal Rules of Civil Procedure.

Dated _____, 2000.

_____

Signature's Name:
Address:

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by certified mail this 24th day of May, 2000 to:

Eric N. Assouline, Esq./Raoul G. Cantero, III, Esq.
Adorno & Zeder, P.A. Natalie J. Carlos Esq.
2601 South Bayshore Drive, Suite 1600
Miami, Florida 33133
Telephone: 305-858-5555

/s/ Diane L. Holbrook
Diane L. Holbrook
Plaintiff
P.O. Box 1512
Hobe Sound, Florida 33475-1512

FEDERAL RULES OF CIVIL PROCEDURE

for the

UNITED STATES DISTRICT COURTS

VII. JUDGMENT

Rule 60. Relief from Judgment or Order

(a) **Clerical Mistakes.** Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(b) **Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc.** On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the

judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivison (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, * * *

APPEAL INTAPP

U.S. District Court
Southern District of Florida (Ft. Pierce)

CIVIL DOCKET FOR CASE #: 98-CV-14246

Filed: 08/28/98

Holbrook v. Nationwide Mutual
Assigned to: Judge Edward B. Davis
Demand: $25,430,000
Lead Docket: None
Dkt# in other court: None

Nature of Suit: 110
Jurisdiction: Diversity

Cause: 28:1332 Diversity-Insurance Contract

DIANE L. HOLBROOK
plaintiff

Diane L. Holbrook
[NTC] [PRO SE]
PO Box 1512
Hobe Sound, FL 33475

v.

NATIONWIDE MUTUAL INSURANCE COMPANY,
a Foreign Corporation
C/O Robert CiWetzel Esq.
Registered Agent 800 Graves Mill Road PO Box 10669
Lynchburg, Virginia
defendant

Raoul G. Cantero, III
FTS 858-4777
[COR LD NTC]
Eric Nissim Assouline
FTS 858-4777
[COR LD NTC]
Adorno & Zeder
2601 S Bayshore Drive
Suite 1600
Miami, FL 33133
305-858-5555

[Docket as of April 9, 1999 9:49 am]

Proceedings include all events. APPEAL
2:98 cv14246 Holbrook v. Nationwide Mutual INTAPP

8/28/98 1
[Exhibits AA]
ORGINAL COMPLAINT filed; FILING FEE $150.00 RECEIPT #709120; A-7 (pa) [Entry date 08/31/98]

8/28/98 — Magistrate identification: Magistrate Judge Frank J. Lynch, Jr. (pa) [Entry date 08/31/98]

8/28/98 2 CLERK'S NOTICE of Correcting Clerical Error (pa) [Entry date 08/31/98]

12/16/98 3
[Exhibits BB, CC, DD]
AMENDED COMPLAINT by Diane L. Holbrook, (Answer due 12/26/98 for Nationwide Mutual) amending [1 - 1] complaint (aa) [Entry date 12/17/98]

12/16/98 4 SUMMONS(ES) issued for Nationwide Mutual by serving the Insurance Commissioner (aa) [Entry date 12/17/98]

1/19/99 5 NOTICE of filing papers (attached) regarding the original & amended complaint and default judgment by Diane L. Holbrook (aa) [Entry date 01/22/-99]

1/19/99 6
[Exhibits GG, HH]
RETURN OF SERVICE executed for Nationwide Mutual on 12/21/98 by serving

the Insurance Commissioner Bill Nelson. Answer due on 1/10/99 for Nationwide Mutual (aa) [Entry date 01/22/99]

1/25/99 7
[Exhibit II]
NOTICE of special limited appearance by Raoul G. Cantero, III, Eric N. Assouline by Nationwide Mutual (aa) [Entry date 01/27/99]

1/25/99 7
[Exhibit II]
MOTION with memorandum in support by Nationwide Mutual to dismiss the complaint (aa) [Entry date 01/27/99]

1/29/99 8
[Exhibit JJ]
Notice of Service of Process as to the amended complaint/RETURN OF SERVICE executed for Nationwide Mutual by serving the registered agent Insurance Commissioner on 1/12/99 Answer due on 2/1/99 for Nationwide Mutual (aa) (Entry date 02/01/99]
[*ERROR: date of 1/12/99, corrected, would be 12/21/98 – answer due on 2/01/99 would be 1/10/99]

2/2/99 9
[Exhibit FF]
MOTION by Nationwide Mutual to extend time to file a comprehensive responsive motion to the Amended Complaint (tdj) [Entry date 02/03/99]

2/3/99 10 ORDER granting [9-1] motion to extend time to file a comprehensive responsive

motion to the Amended Complaint set answer due for 3/4/99 for Nationwide Mutual (signed by Judge Edward B. Davis on 2/3/99) CCAP (tdj) [Entry date 02/05/99]

2/8/99 11 NOTICE of Unavailability from 2/10/99 through 2/21/99 due to vacation by Nationwide Mutual (aa) [Entry date 02/09/99]

2/8/99 12
[Exhibit II]
MOTION by Diane L. Holbrook for entry of default as to Nationwide Mutual (aa) [Entry date 02/09/99]

[Docket as of April 9, 1999, 9:49 am]

APPENDIX E

Diane L. Holbrook
P.O. BOX 1512
Hobe Sound, Florida 33475-1512
Telephone: 1(561) 545-9793

May 11, 2001

Clarence Maddox
Clerk of Court, Court Administration
United States District Court
Federal Courthouse Square
301 North Miami Avenue
Miami, Florida 33128

Diane L. Holbrook v. Nationwide Mutual Insurance Company, a Foreign Corporation

Case No.: 98-14246-CIV-MOORE

Dear Mr. Clarence Maddox:

On May 10, 2001, I received a letter from the defendant in this case, Raoul G. Cantero, III, regarding the letter of April 17, 2001 received May 2, 2001 by you, showing the clerical mistake in the record. Please note that (See Attached) FRAP 41. Mandate: Contents; Issuance and Effective Date; Stay (d) Staying the Mandate. (2) Pending Petition for Certiorari. (D) The court of appeals *must issue the mandate immediately* when a copy of a Supreme Court order denying the petition for writ of certiorari is filed. (IF PETITION were to be denied).

The documental evidences shows clearly the clerical mistake as well as miscommunication on what my time frame is initially about. Court of Appeals starting their

order as of February 3, 1999 on when my brief relates from August 28, 1998 thru January 19, 1999 time frame. Therefore, I request that you take action on Diane L. Holbrook, Plaintiff, notice by correcting the clerical mistake pursuant to Rule 60(a) and requesting also to enter default against defendant after correction has been made upon record pursuant to Rule 55(a) to be entered in default of naturalization.

Sincerely Yours,

/s/ Diane L. Holbrook
Diane L. Holbrook

cc: Raoul G. Cantero, III
Eric N. Assouline
Natalie J. Carlos
ADORNO & ZEDER, P.A.
2601 South Bayshore Drive, Suite 1600
Miami, Florida 33133-5413
Telephone (305) 858-5555

cc: Lowry J. Miller
Miller, Miller, Kearney & Geschickter, LLP
10400 Eaton Place, Suite 312
Fairfax, Virginia 22030
Telephone: (703) 218-1300

BEST AVAILABLE COPY

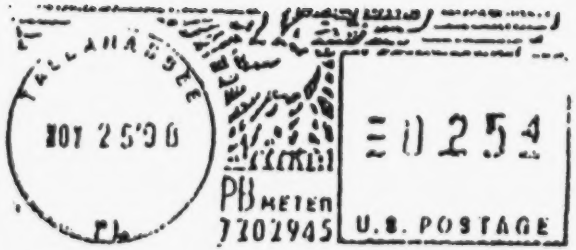
THE TREASURER OF THE STATE OF FLORIDA
DEPARTMENT OF INSURANCE • STATE FIRE MARSHAL

200 East Gaines Street
Tallahassee, Florida 32399-4201

RETURN SERVICE REQUESTED

APPENDIX F

PRESORTED
FIRST CLASS



RETURN SERVICE REQUESTED

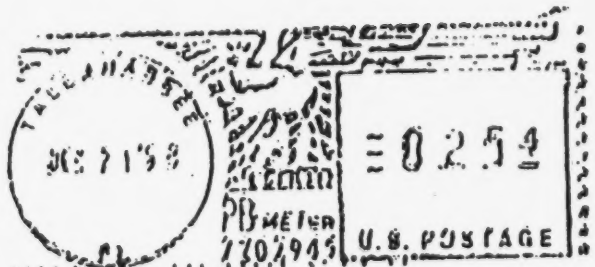
AUTO **33475

THE TREASURER OF THE STATE OF FLORIDA
DEPARTMENT OF INSURANCE · STATE FIRE MARSHAL

200 East Gaines Street
Tallahassee, Florida 32399-4201

RETURN SERVICE REQUESTED

PRESORTED
FIRST CLASS



APPENDIX G

[SEAL]

THE TREASURER OF THE STATE OF FLORIDA
Department of Insurance

11/25/1998

DIANE L. HOLBROOK
POST OFFICE BOX 1512
HOBE SOUND FL 33475-1512

CASE NO.: 98-14246
COUNTY: SOUTHERN
COURT: UNITED STATES DISTRICT COURT
DOI-SOP NO.: 98-29181
PLAINTIFF: DIANE L. HOLBROOK
DEFENDANT: NATIONWIDE MUTUAL INSURANCE COMPANY

The enclosed summons has not been accepted or served. Please make the necessary corrections and return to Service of Process for acceptance and service.

The process must be validated by the Clerk of the Court. The case number, seal, and signature of the Clerk of the Court must appear on the summons.

When you return the process, please make sure you have the following copies or your process may be delayed. The original-validated summons and two copies of the summons. We must retain an entire copy of the process being served as well as send one to the designated defendant.

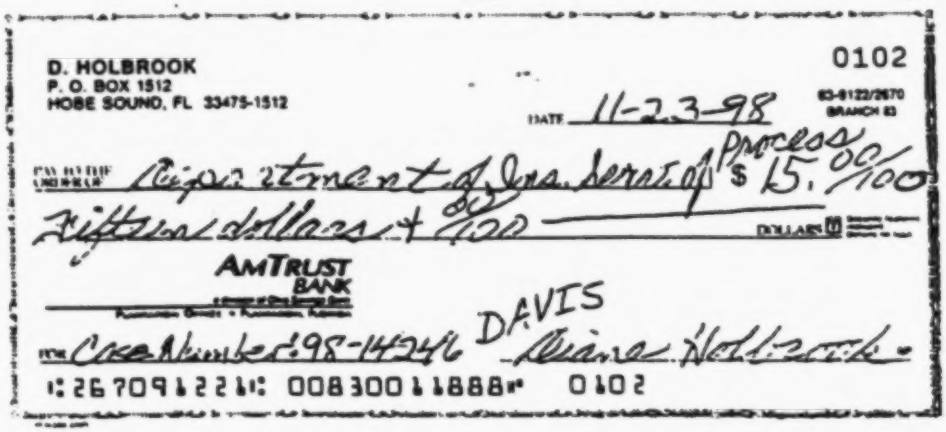
Your check in the amount of $15.00 for the service fee is enclosed. Please attach the check and this letter to the process being returned to our office for acceptance and service.

Contact our office for further assistance.

Sincerely yours,

/s/ Jane Wesselman
Jane Wesselman
Staff Assistant
Service of Process
Telephone 850-922-3114 Extension 4290

Enc. Check 0102 in the amount of $15.00 made payable to Department of Insurance


D. HOLBROOK
P. O. BOX 1512
HOBE SOUND, FL 33475-1512

0102

DATE 11-23-98

Department of Ins. Service of Process $ 15.00/100

Fifteen dollars + 00

AMTRUST BANK

FOR Case Number: 98-14246 DAVIS Diane Holbrook

⑆267091221⑆ 008300116888⑈ 0102

DIVISION OF LEGAL SERVICES
Service of Process Section
200 EAST GAINES STREET · P.O. Box 6200
Tallahassee, Florida 32314-6200 · (850) 922-3114
Fax (850) 922-2544

APPENDIX H

Corporate Inquiry Menu Page 1 of 1

Florida Division of
Corporations
Public Access

Inquiry by:

- ☐ Corporation/Trademark Name
- ☐ Officer/Registered Agent Name
- ☐ Registered Agent Name
- ☐ Trademark Owner Name
- ☐ FEI Number
- ☐ Document Number
- ☐ Trademark Name

Search String: _____

Corporate Inquiry Menu
Please select an inquiry type from the list below, then enter a search key in the search field. Press SEARCH to begin the search.

CORPORATE DETAIL RECORD SCREEN

12/03/98 4:20 PM

NUM: F98000006441 ST: OH ACTIVE/FOREIGN
PROF FLD: 11/23/1998

FEI #. 31-1613686
NAME: NATIONWIDE INSURANCE COMPANY OF FLORIDA
PRINCIPAL: ONE NATIONWIDE PLAZA
ADDRESS: COLUMBUS OH 43216
RA NAME: INSURANCE COMMISSIONER

RA ADDR: CAPITOL
TALLAHASSEE, FL 32399-0300 US
ANN REP: · NONE FILED ·

APPENDIX I

CASE NO. 98-14246-CIV-DAVIS

REQUEST TO CLERK TO ENTER DEFAULT

To: Clerk

Defendant Nationwide Mutual Insurance Company, a Foreign Corporation, having failed to answer within twenty (20) days from the date of service of the "Amended Complaint" supersedes the "Original Complaint" resulting in manner in which Defendant is in default, you are requested to enter his default pursuant to Rule 55(a) of the Federal Rules of Civil Procedure.

Dated _____, 1999

_____

Signature's Name:
Address:

APPENDIX J

[RECEIVED
U.S. Dist. Ct.
JAN 19 99]

[SEAL]

THE TREASURER OF THE STATE OF FLORIDA
Department of Insurance

DIANE L. HOLBROOK
PLAINTIFF(S),

VS.
NATIONWIDE INSURANCE COMPANY
DEFENDANT(S).

CASE #: 98-14246 DAVIS
COURT: UNITED STATES DISTRICT COURT
COUNTY: SOUTHERN
DOI-SOP#: 98-31152

SUMMONS, AMENDED COMPLAINT, DOCUMENTS, SCHEDULING ORDER, NOTICE OF DEPOSITION, ORDER, ORDER, DOCUMENTS, PETITION FOR APPEAL, DOCUMENT, ORDER, ORDER, ORDER, DOCUMENTS, MOTION FOR CHANGE OF VENUE, DOCUMENTS, ORDER, MOTION TO RECUSE, DOCUMENT, MOTION FOR CHANGE OF VENUE, DOCUMENT, AMENDED MOTION FOR JUDGMENT, MOTION FOR JUDGMENT, DOCUMENT, ORDER, MOTION FOR JUDGMENT, ORDER, DOCUMENT, MOTION FOR JUDGMENT, EXHIBIT, MOTION TO DISMISS FOR FAILURE TO MAKE DISCOVERY AND MOTION FOR SANCTIONS.

NOTICE OF SERVICE OF PROCESS

NOTICE IS HEREBY GIVEN of the acceptance or receipt of Service of Process by the Insurance Commissioner and Treasurer, served or delivered to my office by MAIL on the 21st day of December, 98, addressed to the Insurance Commissioner (as process agent or agent for the insurer). A copy of said process was mailed by certified mail from this office to:

NATIONWIDE MUTUAL INSURANCE COMPANY
ANNE BOUTILIER
1200 SOUTH PINE ISLAND ROAD
PLANTATION FL 33324

as resident agent for the named insurer according to my records; or mailed to said addressee as an agent or to said insurer at the request of the plaintiff or plaintiff's attorney on the 12th day of January, 99.

/s/ Bill Nelson
Bill Nelson
Insurance Commissioner and Treasurer

Our office will only serve the initial process (Summons and Complaint) or Subpoena and is not responsible for transmittal of any subsequent filings, pleadings or documents unless otherwise ordered by the Court pursuant to Florida Rules of Civil Procedure. Rule #1.080.

Distribution: Clerk of Court, Defendant, Plaintiff or Plaintiff's Attorney

Plaintiff's Representative:
DIANE L. HOLBROOK
POST OFFICE BOX 1512
HOBE SOUND FL 33475-1512

JW

DIVISION OF LEGAL SERVICES
Service of Process Section
200 EAST GAINES STREET · P.O. Box 6200
Tallahassee, Florida 32314-6200 · (850) 922-3114
Fax (850) 922-2544

[RECEIVED
U.S. Dist. Ct.
Jan 29 99]

[SEAL]

THE TREASURER OF THE STATE OF FLORIDA
Department of Insurance

DIANE L. HOLBROOK
PLAINTIFF(S),

VS.
NATIONWIDE INSURANCE COMPANY
DEFENDANT(S).

CASE #: 98-14246 DAVIS
COURT: UNITED STATES DISTRICT COURT
COUNTY: SOUTHERN
DOI-SOP#: 98-31152

SUMMONS, AMENDED COMPLAINT, DOCUMENTS, SCHEDULING ORDER, NOTICE OF DEPOSITION, ORDER, ORDER, DOCUMENTS, PETITION FOR APPEAL, DOCUMENT, ORDER, ORDER, ORDER, DOCUMENTS, MOTION FOR CHANGE OF VENUE, DOCUMENTS, ORDER, MOTION TO RECUSE, DOCUMENT, MOTION FOR CHANGE OF VENUE, DOCUMENT, AMENDED MOTION FOR JUDGMENT, MOTION FOR JUDGMENT, DOCUMENT, ORDER, MOTION FOR JUDGMENT, ORDER, DOCUMENT, MOTION FOR JUDGMENT, EXHIBIT, MOTION TO DISMISS FOR FAILURE TO MAKE DISCOVERY AND MOTION FOR SANCTIONS.

NOTICE OF SERVICE OF PROCESS

NOTICE IS HEREBY GIVEN of the acceptance or receipt of Service of Process by the Insurance Commissioner and Treasurer, served or delivered to my office by MAIL on the 21st day of December, 98, addressed to the Insurance Commissioner (as process agent or agent for the insurer). A copy of said process was mailed by certified mail from this office to:

NATIONWIDE MUTUAL INSURANCE COMPANY
ANNE BOUTILIER
1200 SOUTH PINE ISLAND ROAD
PLANTATION FL 33324

as resident agent for the named insurer according to my records; or mailed to said addressee as an agent or to said insurer at the request of the plaintiff or plaintiff's attorney on the 12th day of January, 99.

/s/ Bill Nelson
Bill Nelson
Insurance Commissioner and Treasurer

Our office will only serve the initial process (Summons and Complaint) or Subpoena and is not responsible for transmittal of any subsequent filings, pleadings or documents unless otherwise ordered by the Court pursuant to Florida Rules of Civil Procedure. Rule #1.080.

Distribution: Clerk of Court, Defendant, Plaintiff or Plaintiff's Attorney

Plaintiff's Representative:
DIANE L. HOLBROOK
POST OFFICE BOX 1512
HOBE SOUND FL 33475-1512

JW

DIVISION OF LEGAL SERVICES
Service of Process Section
200 EAST GAINES STREET · P.O. Box 6200
Tallahassee, Florida 32314-6200 · (850) 922-3114
Fax (850) 922-2544

APPENDIX K

Diane L. Holbrook
P.O. Box 1512
Hobe Sound FL 33475-1512

June 28, 2000

RE: 00-10141-CC Diane L. Holbrook v. Nationwide Mutual Ins. Co.

DC DKT NO.: 98-14246 CV-EBD

CC: Diane L. Holbrook
CC: Raoul G. Cantero III
CC: Clarence Maddox
CC: Eric Nissim Assouline
CC: Administrative File

January 19, 2001

RE: 00-10141-CC Diane L. Holbrook v. Nationwide Mutual Ins. Co.

DC DKT NO.: 98-14246 CV-EBD

CC: Diane L. Holbrook
CC: Raoul G. Cantero III
CC: Hon. Edward B. Davis
CC: Hon. Frank J. Lynch Jr.
CC: Administrative File

APPENDIX L

[Filed OCT 01 1999]

U.S. COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

(DC DKT NO. 98-14246)

Diane L. Holbrook vs. Nationwide Mutual Ins. Co., a Foreign Corp.
Dkt. No. 99-10415 JJ

11th Cir. R. 26.1 (see reverse) requires that a Certificate of Interested Persons and Corporate Disclosure Statement be included within the principal brief filed by any party, and included within any petition, answer, motion or response filed by any party. You may use this form to fulfill this requirement. In alphabetical order, with one name per line, please list the trial judge(s), and all attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of this case or appeal, including subsidiaries, conglomerates, affiliates and parent corporations, including any publicly held company that owns 10% or more of the party's stock, and other identifiable legal entities related to a party.

(please type or print legibly):

Administrative File
Adorno & Zeder, P.A. (Law offices for appellee)
Assouline, Esq., Eric Nissim (co-counsel for appellee)
Cantero III, Esq., Raoul G. (co-counsel for appellee)

Carlos, Esq., Natalie J. (co-counsel for appellee)
Davis, Honorable Judge Edward B. (US SOUTHERN Dist.-Miami)
Holbrook, Diane L. (pro se for appellant)
Juenke, Carlos (court administrator/clerk of court-Miami)
Lynch, Jr., Honorable Magistrate Judge Frank J. (Fort Pierce, FL)
Nationwide Mutual Insurance Co., a Foreign Corp. (appellee)

APPENDIX M

UNITED STATES COURT OF APPEALS
Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

Thomas K. Kahn
Clerk

In Replying Give Number
Of Case And Names of Parties

April 22, 1999

MEMORANDUM TO COUNSEL OR PARTIES

RE: 99-10415-JJ Diane L. Holbrook v. Nationwide Mutual Ins. Co.

DC DKT NO.: 98-14246 CV-EBD

Please take notice that a petition for interlocutory appeal has been filed.

Any response which a party wishes to file must be received by this office on or before ~~May~~ April 23, 1999, after which the motion and the response will be forwarded to the court for ruling without oral argument.

Copies of the court's decision will be sent to all counsel and to pro se parties.

Counsel filing the referenced motion should forward a Certificate of Interested Persons and Corporate Dis-

BEST AVAILABLE COPY

closure Statement as required by 11th Cir. R. 27-1(a) within the designated time period.

Sincerely,

THOMAS K. KAHN, Clerk

Reply To: Andrea Ware (404) 335-6179

This motion will be construed as a motion for default judgment.
Appellant: It isn't necessary to file documents in the district court.

APPENDIX N

U.S. COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATMENT

(DC DKT No. 98-14246 CV-EBD)

Dkt. No. 00-10141-CC

Diane L. Holbrook

vs.

Nationwide Mutual Ins. Co., a Foreign Corp.

11th Cir. R. 26.1 (see reverse) requires that a Certificate of Interested Persons and Corporate Disclosure Statement be included within the principal brief filed by any party, and included within any petition, answer, motion or response filed by any party. You may use this form to fulfill this requirement. In alphabetical order, with one name per line, please list the trial judge(s), and all attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of this case or appeal, including subsidiaries, conglomerates, affiliates and parent corporations, including any publicly held company that owns 10% or more of the party's stock, and other identifiable legal entities related to a party.

(please type or print legibly):

Administrative File

ADORNO & ZEDER, P.A. (Law office for appellee)
Assouline, Esq., Eric Nissim (co-counsel for appellee)

Cantero III, Esq., Raoul G. (co-counsel for appellee)
Carlos, Esq., Natalie J. (co-counsel for appellee)
Cedeno, Yvonne (district court clerk's operations supervisor)
Holbrook, Diane L. (pro-se for appellant)
Lynch, Jr., Honorable Magistrate Judge Frank J. (Fort Pierce, FL)
**Maddox, Clarence (court administrator/clerk of court-Miami)
Moore, Honorable Judge K. Michael (U.S. Southern Dist. - Miami)
Miller, Lowry J. (co-counsel for appellee)
Miller, Miller, Kearney & Geschickter, LLP (Law office for appellee)
Nationwide Mutual Insurance Co., a Foreign Corp. (appellee)
**Other (any federal clerk of court/court administrator-Miami)

Supreme Court
FILED

01-31 JUL 06 2001

OFFICE OF THE CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

DIANE L. HOLBROOK,

Petitioner,

v.

NATIONWIDE MUTUAL INSURANCE COMPANY,
A FOREIGN CORPORATION,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

SUPPLEMENTAL APPENDIX

DIANE L. HOLBROOK
P.O. Box 1512
Hobe Sound, Florida
33475-1512
(561) 545-9793
Petitioner Pro Se.

Washington, D.C. • THIEL PRESS • (202) 328-3388

19 pp

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APPENDIX O

[Filed NOV 5 1999]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 98-14246-CIV-DAVIS

DIANE L. HOLBROOK,

Plaintiff,

vs.

NATIONWIDE MUTUAL INSURANCE COMPANY,

Defendant.

REPORT AND RECOMMENDATION
ON DEFENDANT'S MOTION
FOR FINAL JUDGMENT (DE #34)

THIS CAUSE having come on to be heard upon the aforementioned Motion, and this Court having reviewed the Motion, Response, and the pertinent portions of the record, makes the following recommendation.

BACKGROUND

1. On August 28, 1998, Plaintiff, proceeding *pro se*, filed her complaint alleging breach of contract, bad faith and misrepresentation (DE #1). On December 16, 1998, Plaintiff filed an amended complaint (DE #3) and a summons was issued (DE #4).

2. On January 25, 1999, Defendant filed a Motion to Dismiss the original complaint for failing to serve Defendant within 120 days (DE #7).

3. The Defendant was served with the amended complaint on January 12, 1999 (DE #6 and #8). On February 2, 1999, Defendant filed a motion to extend time to serve its answer or a responsive motion to the amended complaint (DE #9). On February 3, 1999, Judge Davis granted Defendant's motion and extended the time to March 4, 1999 (DE #10).

4. On February 8, 1999, Plaintiff filed a motion for default judgment on the grounds that Defendant failed to respond to her amended complaint (DE #12 and #13). On February 12, 1999, Defendant filed a response to Plaintiff's motion (DE #14).

5. On February 22, 1999, Judge Davis denied as moot Defendant's Motion to Dismiss since Plaintiff filed an amended complaint, and denied Plaintiff's motion for default judgment because the Court granted Defendant an extension of time to March 4, 1999 to respond to the amended complaint (DE #15).

6. On March 4, 1999, Defendant filed a Motion to Dismiss, to Strike, and for More Definite Statement (DE #16).

7. On the same day, Plaintiff filed another motion for default judgment on the grounds that Defendant failed to file a response within the deadline imposed by Judge Davis' order of February 22, 1999 (DE #17). On March 19, 1999, Judge Davis denied Plaintiff's motion and noted that on the same day Plaintiff filed her motion, March 4, 1999, the Defendant filed a Motion to Dismiss that was within the deadline imposed by the Court (DE #18).

8. On April 7, 1999, Plaintiff filed an interlocutory appeal of the March 19, 1999 order with the Eleventh Circuit (DE #20).

9. On April 12, 1999, Judge Davis issued an order requiring Plaintiff to show cause why Defendant's Motion to Dismiss should not be granted for her failure to file a response to the motion (DE #22). On April 20, 1999, Plaintiff filed a response to the order to show cause (DE #25).

10. On April 26, 1999, Judge Davis granted Defendant's Motion to Dismiss concluding that Plaintiff's amended complaint failed to allege facts to allow the Court to conclude that it had diversity jurisdiction and failed to identify a number of claims Plaintiff was purporting to assert (DE #27). Judge Davis gave Plaintiff thirty (30) days to file a second amended complaint.

11. On May 18 and 21, 1999, Plaintiff filed a motion for extension of time (DE #31 and #29). The motions were identical. Plaintiff requested an extension of time to file her second amended complaint from May 26, 1999 to August 5, 1999.

12. On May 24, 1999, this Court denied Plaintiff's request for an extension for failure to show good cause (DE #30). On May 28, 1999, Judge Davis denied as moot Plaintiff's second motion for extension of time (DE #32).

13. On September 7, 1999, Plaintiff filed a Motion for Extension of Time for a Stay of Proceedings Pending Final Rulings of the Interlocutory Appeal (DE #35). On September 21, 1999 Defendant filed a response to the motion (DE #36).

14. On September 23, 1999, this Court denied Plaintiff's motion for stay for failure to set forth any cause

why the proceedings should be stayed or the time extended (DE #37).

15. On August 27, 1999, Defendant filed the instant motion for final judgment (DE #34). Defendant requests the court to enter a final judgment of dismissal with prejudice against Plaintiff for her failure to file a second amended complaint. On September 27, 1999, Plaintiff filed a response to the motion (DE #38).

16. On September 22, 1999, the Eleventh Circuit dismissed Plaintiff's appeal of the March 19, 1999 order as frivolous (DE #40).

DISCUSSION

Pursuant to Judge Davis' order of April 26, 1999, Plaintiff was required to file her second amended complaint on or before May 26, 1999. Instead, on May 18 and 21, 1999, Plaintiff filed a motion for extension of time. Plaintiff sought to extend the deadline from May 26 to August 5, 1999. The reasons for the request were that Plaintiff had been summoned for jury service for a two week period beginning June 21, 1999 and that she had previously filed, on April 13, 1999, a Notice of Vacation stating that she would be out of the state from May 10 through June 18, 1999.

This Court denied Plaintiff's motion for extension of time to file a second amended complaint for failing to show good cause for the extension. This Court notes that Plaintiff's jury duty was not set to begin until twenty-six (26) days after the May 26th deadline and Plaintiff's vacation period did not begin until two (2) weeks after Judge Davis' order imposing the deadline to file a second amended complaint. Furthermore, it was this Court's view that Plaintiff's request for a seventy-one day (71) day extension was unreasonable.

On August 27, 1999, over three (3) months after Plaintiff's second amended complaint was due to be filed, Defendant filed a Motion for Final Judgment. Defendant argues that Plaintiff has not filed a second amended complaint nor has she shown good cause for any extensions. Defendant asserts that the Court's order dismissing Plaintiff's complaint with leave to amend within a specified period became final when the time period allowed for the amendment expired. See, *Hertz Corp. v. Alamo Rent-A-Car, Inc.*, 16 F.3d 1126 (11th Cir. 1994); *United States v. Garcia*, 844 F.2d 1528 (11th Cir. 1988); *Schuurman v. Motor Vessel Betty K V*, 798 F.2d 442 (11th Cir. 1986). This Court agrees.

This Court has reviewed Plaintiff's response to Defendant's Motion for Final Judgment, filed September 27, 1999, and finds it to be incomprehensible and unintelligible. This Court is not sure what Plaintiff is arguing except that it appears she is attempting to re-argue her Motion for Default Judgment and that her appeal of Judge Davis' order on that motion stays the proceedings in this Court, including the time to file her second amended complaint. This Court previously reviewed and rejected Plaintiff's argument on staying these proceedings pending her appeal to the Eleventh Circuit in her motion filed September 7, 1999.

This Court has completed a thorough review of the record and notes that Plaintiff never filed a second amended complaint. Judge Davis set the deadline for May 26, 1999 and Plaintiff failed to comply. Plaintiff even failed to file her second amended complaint 1) after this Court denied her motion to extend, 2) after this Court denied her motion to stay, or 3) after Defendant filed the instant motion for final judgment. Moreover, on September 22, 1999 the Eleventh Circuit dis-

missed Plaintiff's appeal as frivolous and today, some forty-four (44) days later, Plaintiff still has failed to file her second amended complaint.

CONCLUSION

ACCORDINGLY, this Court recommends to the District Court that Defendant's Motion for Final Judgment be GRANTED.

The parties shall have ten (10) days from the date of this Report and Recommendation within which to file objections, if any, with the Honorable Edward B. Davis, United States District Judge who has been assigned to try this case.

DONE AND SUBMITTED this 5th day of November, 1999, at Fort Pierce, Northern Division of the Southern District of Florida.

/s/ Frank J. Lynch, Jr.
FRANK J. LYNCH, JR.
UNITED STATES MAGISTRATE JUDGE

cc: Honorable Edward B. Davis
Diane L. Holbrook, Pro Se
Eric N. Assouline, Esq.

APPENDIX P

[Filed NOV 15 1999]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT PIERCE DIVISION

Case No. 98-14246-CIV-DAVIS
Magistrate Judge: Lynch

DIANE L. HOLBROOK,

Plaintiff,

v.

NATIONWIDE MUTUAL INSURANCE COMPANY,
a FOREIGN CORPORATION,

Defendant.

OBJECTION TO MAGISTRATE JUDGE FRANK J. LYNCH, JR.'S REPORT AND RECOMMENDATION ON DEFENDANT'S MOTION FOR FINAL JUDGMENT (DE #34)

PERTINENT to this report, this Court failed to mention about September 29, 1999 (DE #41) NOTICE of Filing Motion for Reconsideration and Clarification with the United States Court of Appeals. Furthermore:

BACKGROUND

1. Paragraph 2, Plaintiff served the Defendant on the 115th day being within 120 days allowable by law.

2. Paragraph 3, Clerical Error resulted into a chain reaction of occurrences on something that the Plaintiff should have received a Default Judgment against the Defendant. The District Court erred in calculating the 30 day extension date relying upon the Clerical Error. Furthermore, on August 27, 1999, the Defendant themself agreed on signed document on Paragraph 1 that the Defendant was served with the amended complaint on December 21, 1998 (DE #34). Both sides agree with the 115th day served upon Defendant and the Clerk, to this day pertinent to this report, have not corrected there mistake to properly issue the Default Judgment against the Defendant. Again, Magistrate Judge Frank J. Lynch, Jr. is obviously relying on this error as this Court has in the past. Recommendation for clerk to correct error and issue Default Judgment against Defendant to finally close case in Plaintiff's full favor.

3. Most of the remainder of Magistrate Judge Frank J. Lynch. Jr.'s Report and Recommendation on Defendant's Motion for Final Judgment (DE#34) is explained within attachments consisting of Plaintiff Diane L. Holbrook's Response in Opposition to Defendant, Nationwide Mutual Insurance Company, a Foreign Corporation's Motion for Final Judgment and Incorp. Memorandum of Law. These would also be part of my Objections to Magistrate Judge Frank J. Lynch. Jr.'s Report and Recommendation on Defendant's Motion for Final Judgment (DE #34) *as showing good cause reasoning for* why Plaintiff is entitle to her Default Judgment against Defendant. Plaintiff does not need a second amended complaint because:

a) Plaintiff's amended complaint shows allege facts to allow this Court to conclude that it had diversity jurisdiction by Paragraph 17 including Amended Motion For Judgment as part of the Amended Complaint.

b) Plaintiff's amended complaint does identify a number of claims Plaintiff was purporting to assert by Paragraph 17 including Amended Motion For Judgment with multiple exhibits as part of the Amended Complaint.

c) Therefore, there is no need pertinent to reasoning of the April 26, 1999 Order, of doing a second amended complaint because it is in there and this would mean starting over again (something the Defendant would love to happen).

Diane L. Holbrook, respectfully request this Court to enter Plaintiff's Motion for Default Judgment *or* to Court Order for Clerical corrections and entry of "Request To Clerk To Enter Default against Defendant". Plaintiff, Diane L. Holbrook respectfully requests that this Court deny Defendant's Motion for Final Judgment and such other relief as this Court finds just, fair and equitable.

Respectfully submitted,

/s/ Diane L. Holbrook
Diane L. Holbrook
P O Box 1512
Hobe Sound, Florida 33475-1512
Ph: 561-545-9793

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by certified mail this 13th day of November, 1999 to:

Eric N. Assouline Esq.
Raoul G. Cantero, III Esq.
Natalie Carlos Esq.
Adorno & Zeder, P.A.

2601 South Bayshore Drive, Suite 1600
Miami, Florida 33133
Ph: 305-858-5555

Attn: Intake Clerk
Clerk, United States District Court
300 South 6th Street
Fort Pierce, Florida 34950

Attn: Intake Clerk
Clerk, United States District Court
Federal Courthouse Square
301 North Miami, Florida 33128-7788

/s/ Diane L. Holbrook
Diane L. Holbrook

APPENDIX Q

[Filed DEC 6 1999]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT PIERCE DIVISION

Case No. 98-14246-CIV-DAVIS
Magistrate Judge: Lynch

DIANE L. HOLBROOK,

Plaintiff,

v.

NATIONWIDE MUTUAL INSURANCE COMPANY,
a FOREIGN CORPORATION,

Defendant.

PLAINTIFF, DIANE L. HOLBROOK'S RESPONSE TO DEFENDANT, NATIONWIDE'S RESPONSE TO PLAINTIFF'S OBJECTIONS TO MAGISTRATE'S REPORT AND RECOMMENDATION ON NATIONWIDE'S MOTION FOR FINAL JUDGMENT

Plaintiff, Diane L. Holbrook, hereby responds to the Defendant Nationwide Mutual Insurance Company, a Foreign Corporation ("Nationwide")'s response to Plaintiff's Objections to the Magistrate's Report and Recommendation on Defendant's Motion for Final Judgment as follows:

This Court should adopt, in its entirety, the Plaintiff's objections because the Magistrate's Report and Recommendation contains within its report uncorrected Clerical mistakes. See Rule 60 recommending that the Clerical mistakes be corrected and for the Clerk to issue Default Judgment against Defendant to finally close this case in Plaintiff's full favor. Further explained and backed by Documental Evidences as Exhibits shows good cause reasoning for why Plaintiff is entitle to her Default Judgment against Defendant because it also shows that the Plaintiff's amended complaint does identify a number of claims and shows allege facts to allow this Court to conclude that it had diversity jurisdiction. Therefore, there is no need pertinent to reasoning of doing a second amended complaint.

WHEREFORE, Plaintiff Diane L. Holbrook respectfully requests this Court acknowledge and to Court Order for Clerical corrections and entry of "Request to Clerk to Enter Default against Defendant". Plaintiff, Diane L. Holbrook respectfully requests that this Court deny Defendant's response of overruling Plaintiff's objection to the Magistrate's Report and Recommendation and also deny Nationwide's Motion for Final Judgment and such other relief as this court finds just, fair and proper.

Respectfully submitted,

/s/ Diane L. Holbrook
Diane L. Holbrook
P O Box 1512
Hobe Sound, Florida 33475-1512
Ph: 561-545-9793

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by certified mail this 4th day of December, 1999, to:

Eric N. Assouline Esq.
Raoul G. Cantero, III Esq.
Natalie Carlos Esq.
Adorno & Zeder, P.A.
2601 South Bayshore Drive, Suite 1600
Miami, Florida 33133
Ph: 305-858-5555

Attn: Intake Clerk
Clerk, United States District Court
300 South 6th Street
Fort Pierce, Florida 34950

Attn: Intake Clerk
Clerk, United States District Court
Federal Courthouse Square
301 North Miami Avenue
Miami, Florida 33128-7788

/s/ Diane L. Holbrook
Diane L. Holbrook

APPENDIX R

[Filed DEC 15 1999]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 98-14246-CIV-DAVIS/LYNCH

DIANE L. HOLBROOK,

Plaintiff,

v.

NATIONWIDE MUTUAL INSURANCE COMPANY,

Defendants.

ORDER

THIS MATTER is before the Court on the report of Magistrate Judge Lynch, recommending that this Court grant Defendant's Motion for Final Judgment [D.E. #34]. Plaintiff filed objections to the Magistrate Judge's report, Defendant responded to Plaintiff's objections, and Plaintiff filed a reply to Defendant's response to Plaintiff's objections. This Court has reviewed all the responsive papers and finds Plaintiff's objections to be without merit. For the reasons stated in the report of the Magistrate Judge, and upon independent review of the record, it is

ORDERED AND ADJUDGED that Defendant's Motion for Final Judgment in its favor is **GRANTED**; the Clerk shall **CLOSE THIS CASE**; and all motions not otherwise disposed of are hereby **DENIED AS MOOT.**

DONE AND ORDERED in Chambers in Miami, Florida, this 14th day of December, 1999.

/s/ Edward B. Davis
EDWARD B. DAVIS
CHIEF UNITED STATES DISTRICT JUDGE

cc: attached service list

Eric N. Assouline
Raoul Cantero, III
Natalie G. Carlos
ADORNO & ZEDER, P.A.
2601 South Bayshore Drive, Suite 1600
Miami, Florida 33133

Diane L. Holbrook
P.O. Box 1512
Hobe Sound, Florida 33475-1512

APPENDIX S

December 31, 1999

Diane L. Holbrook
P O Box 1512
Hobe Sound, Florida 33475-1512
Telephone: 561-545-9793

Attn: Eric N. Assouline, Esq./Raoul G. Cantero III, Esq./
ADORNO & ZEDER, P.A. Natalie J. Carlos, Esq.
2601 South Bayshore Drive, Suite 1600
Miami, Florida
Telephone: 305-858-5555

Dear Eric N. Assouline, Raoul G. Cantero III and Natalie J. Carlos

Pursuant to my telephone conferences of December 20th and December 21st, 1999 to Raoul G. Cantero III, Esq.'s private receptionist/secretary and Natalie J. Carlos, Esq.'s private receptionist/secretary relayed courtesy message of planning to Appeal Chief Judge Edward B. Davis's final ORDER. Also, left message for Eric N. Assouline, Esq. to call me back and left my phone number on his voice message box. None of the attorneys have called to object to my Appeal of this case. This is now written at the end of the day of December 31, 1999 being ten days after last attorney was notified by his own receptionist/secretary was called into.

If there are any questions concerning these matters, please feel free to contact me.

Sincerely Yours,

/s/ Diane L. Holbrook
Diane L. Holbrook

Enclosure
Copy of telephone Bill.